

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-418V

ELLEN M. LUCEY, personal
representative of the Estate of
VALERIAN KOSTKA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 11, 2024

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Lauren Kells, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On December 1, 2022, Ellen M. Lucey, as personal representative of the Estate of Valerian Kostka, filed a Motion for a Ruling on the Record arguing that Ms. Kostka suffered a shoulder injury related to vaccine administration ("SIRVA") following an influenza vaccine administered on September 19, 2019. ECF No. 39.

On May 2, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On July 2, 2024, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$67,500.00. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$67,500.00 in the form of a check payable to Ellen M. Lucey, as**

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

personal representative of the Estate of Valerian Kostka. This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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of the Estate of VALERIAN KOSTKA,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN
SERVICES.

Respondent.

No. 21-418V
Chief Special Master Corcoran
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On December 1, 2022, Ellen M. Lucey, as personal representative of the Estate of Valerian Kostka, filed a Motion for a Ruling on the Record (“Motion”) arguing that Valerian Kostka suffered a shoulder injury related to vaccine administration following administration of a flu vaccine on September 19, 2019.¹ ECF No. 39. Respondent filed his Response to Petitioner’s Motion on February 13, 2023, recommending that entitlement to compensation be denied. ECF No. 42. On May 2, 2024, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation.² ECF No. 45.

¹ Petitioner filed documentation on August 19, 2022, establishing that on August 1, 2022, she was appointed personal representative of Valerian Kostka's Estate under the laws of the State of Wisconsin. *See* Exhibits 13, 14. All references to petitioner herein refer solely to Ellen M. Lucey in her representative capacity as the personal representative of the Estate of Valerian Kostka.

² Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's May 2, 2024, entitlement decision.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$67,500.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).³ Petitioner agrees.

II. Form of the Award

Respondent recommends that petitioner be awarded a lump sum payment of **\$67,500.00**, in the form of a check payable to petitioner, Ellen M. Lucey, as personal representative of the Estate of Valerian Kostka.⁴ Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
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Torts Branch, Civil Division

³ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after a Damages Decision is issued.

⁴ If for some reason petitioner is not authorized by a court of competent jurisdiction to serve as the personal representative of the Estate of Valerian Kostka at the time a payment pursuant to this Proffer is to be made, then any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as personal representative of the Estate of Valerian Kostka upon submission of written documentation of such appointment to the Secretary.

/s/ Lauren Kells

LAUREN KELLS

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DATED: July 2, 2024